

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.
Telephone Number:

Refer Reply To:
CC:CORP:BO1
PLR-120773-09
Date:
August 18, 2009

In Re:

Subsidiary =

Parent =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year A =

Accounting Firm =

Dear :

This replies to your letter, dated April 17, 2009, as submitted by your authorized representatives, on behalf of Parent and its Subsidiary, requesting a ruling that the Commissioner determine, pursuant to § 1.1502-75(b)(2) of the Income Tax Regulations, that the Subsidiary had joined in the making of a consolidated Federal income tax return filed by its Parent for its short first taxable year within the calendar Year A. The

information in that letter and a supplemental letter, dated June 8, 2009, is summarized below.

Summary of Facts

Parent was a corporation that was formed on Date 2, within Calendar Year A. Subsidiary is a corporation that was acquired by Parent as of Date 3 and became a 100-percent owned subsidiary of Parent.

Accounting Firm prepared the income tax returns of Subsidiary pertaining to the tax periods for the period beginning on Date 1 and ending on Date 5. A separate return of Subsidiary was filed which included its income beginning on Date 3 and ending on Date 5, but such separate return was actually designated as a short period tax return. Yet, that return expressed an intention to report Subsidiary's income and expenses for the period beginning on Date 4 and ending on Date 5 with a consolidated return to be filed by Parent on its own behalf and on behalf of Subsidiary for the short consolidated tax year ending on Date 5. A consolidated short-period tax return was thereafter filed by Parent for the tax period beginning on Date 2 and ending on Date 5. Such consolidated tax return included Parent's items of income and expense for its tax period beginning on Date 2 and ending on Date 5 and thereby included the Subsidiary's items of income and expense for the tax period beginning on Date 4 and ending on Date 5. Included on the Subsidiary's separate tax return, Statement 5 (Other Deductions), was the following entry: "Remove net income of 2nd half of [Year A]".

A successor accounting firm was retained by the group to prepare Parent's tax returns for subsequent tax years after its short, first consolidated tax year in Year A. This successor firm then discovered that Form 1122 had not been included with the group's first consolidated tax return.

Representations

The Parent and its Subsidiary have made the following representations:

(a) The income and deductions of Parent and Subsidiary were included in the timely filed consolidated return for the year ended on Date 5.

(b) A separate return was not filed by Parent or Subsidiary for the year ended on Date 5.

(c) Parent and Subsidiary were included in the Affiliations Schedule (Form 851) for the year ended on Date 5.

(d) As of the date of this request, the Internal Revenue Service has not notified Parent or Subsidiary concerning the failure to file Form 1122.

Law

Section 1501 of the Code provides that: the making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent.

Section 1.1502-75(a)(1) of the Income Tax Regulations provides that a group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under § 1502.

Section 1.1502-75(b)(1) provides that the consent of a corporation shall be made by such corporation joining in the making of a consolidated return for such year. A corporation shall be deemed to have joined in the making of such return for such year if it files a Form 1122 in the manner specified in § 1.1502-75(h)(2).

Section 1.1502-75(h)(2) provides that if, under the provisions of § 1.1502-75(a)(1), a group wishes to file a consolidated return for a taxable year, then a Form 1122 must be executed by each subsidiary. The regulation provides rules for properly executing Forms 1122 and attaching them to a consolidated return and also provides that a Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for its immediately preceding taxable year(s).

Section 1.1502-75(b)(2) provides that, if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member has nevertheless joined in the making of a consolidated return by such group. Factors that the Commissioner will take into account in making this determination include the following: (i) Whether or not the income and deductions of the member for such taxable year were included in the consolidated return; (ii) Whether or not a separate return was filed by the member for that taxable year; and (iii) Whether or not the member was included in the Affiliations Schedule, Form 851, for such taxable year.

Ruling

Based solely on the information submitted and the representations made by the Parent and the Subsidiary, we rule that Subsidiary has joined with its Parent in the making of a consolidated return for its short, first, consolidated tax year beginning on Date 3 and ending on Date 5. Thus, in accordance with the requirement for joining in filing a consolidated return, as is set forth in § 1501, Subsidiary is determined to have

consented to all the consolidated return regulations which were prescribed under § 1502 prior to the last day prescribed by law for the filing of the tax return for such tax year.

Caveats

We express no opinion about the tax treatment of the facts described above under other provisions of the Code or Regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, these facts that are not specifically covered by the above ruling.

The ruling contained in this letter is based upon information and representations submitted on behalf of Parent and its Subsidiary and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the taxpayer's ruling request. Verification of this material may be required as part of the audit process.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Steven Hankin
Senior Technician Reviewer, Branch 1
Office of Assistant Chief Counsel
(Corporate)